

1
2
3
4
5
6
7 SIDNEY NAIMAN,
8 Plaintiff,
9 v.
10 MERCHANTS BANCARD NETWORK,
11 INC.,
12 Defendant.

Case No. 20-cv-03527-EMC

**ORDER RE SUPPLEMENTAL
BRIEFING**

Docket No. 42

14 The parties have filed a stipulation of dismissal in this putative class action. No class has
15 been certified in the case. Under the stipulation, Plaintiff will dismiss his individual claims with
16 prejudice and the claims of the putative class without prejudice.

17 Federal Rule of Civil Procedure Rule 23(e) requires the Court to
18 review and approve a proposed voluntary dismissal, settlement, or
19 other compromise of a certified class's claims. The Ninth Circuit
20 has held that Rule 23(e) also applies to settlements before
certification, but in a much lighter form that does not entail "the
kind of substantive oversight required when reviewing a settlement
binding upon the class." *Diaz v. Trust Territory of Pac. Islands*, 876
F.2d 1401, 1408 (9th Cir. 1989). Although there has been "some
uncertainty" about whether this holding applies in the wake of the
2003 amendments to Rule 23(e), courts in this district continue to
follow *Diaz* to evaluate the proposed settlement and dismissal of
putative class claims.

24 *Scott v. Comcast Cable Communs. Mgmt., LLC*, No. 16-cv-06869-EMC, 2018 U.S. Dist. LEXIS
25 6914, at *1-2 (N.D. Cal. Jan. 16, 2018).

26 The Court orders the parties to file supplemental briefing and/or evidence regarding the
27 *Diaz* factors. The supplemental briefing shall include a description of all publicity concerning this
28 case and its filing. A joint supplemental brief is strongly preferred. If the parties take divergent

1 positions on any particular factor, they may so note and then each state its respective position.

2 The supplemental brief and/or evidence shall be filed within a week of the date of this
3 order.

4

5 **IT IS SO ORDERED.**

6

7 Dated: September 6, 2023

8

9

10 
EDWARD M. CHEN
United States District Judge

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28